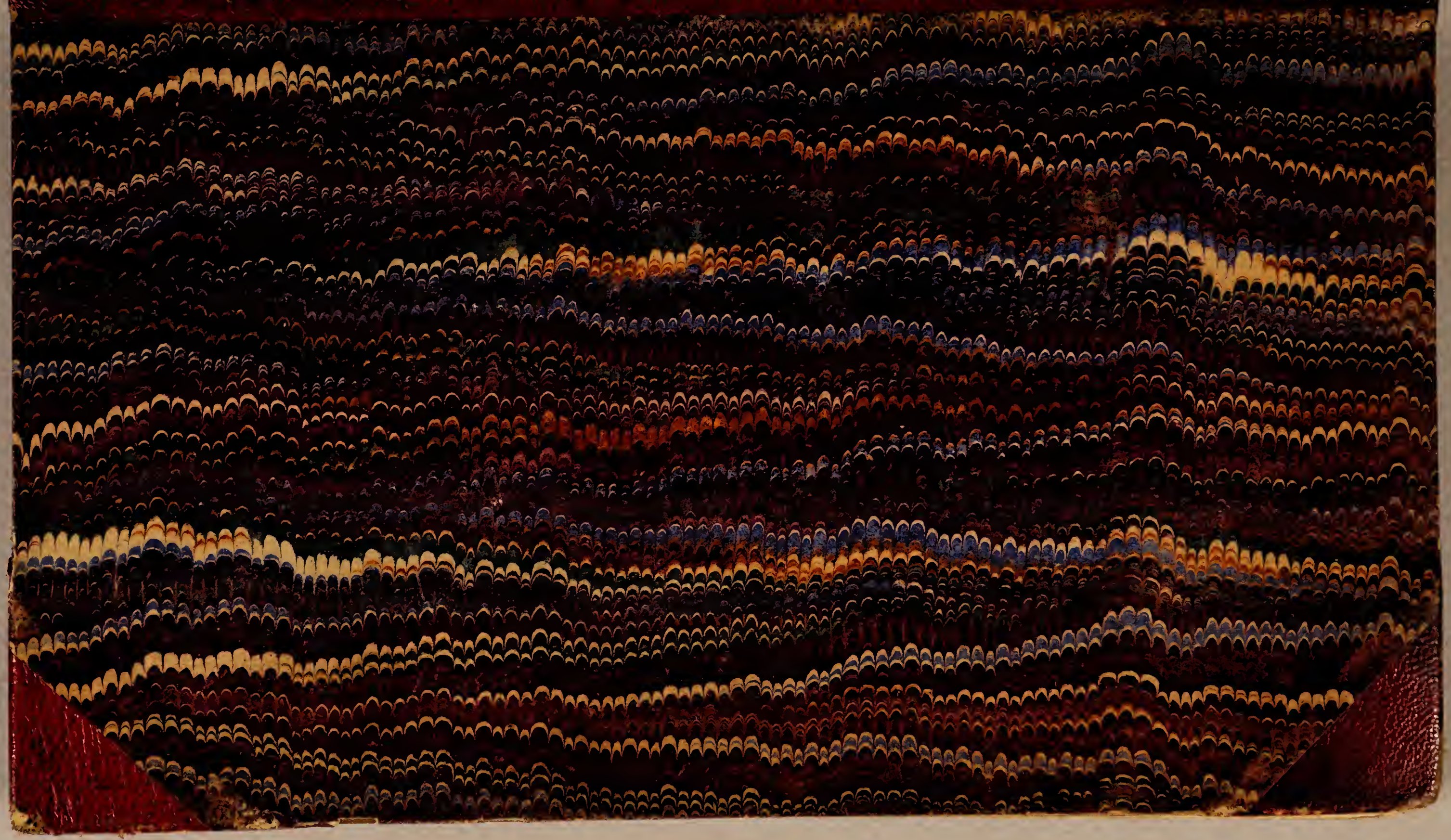

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THE

CASE

OF THE

DUTCH SHIPS,

CONSIDERED.

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THE

CASE

OF THE

DUTCH SHIPS,

CONSIDERED.

By *JAMES MARRIOT*, LL.D.
And one of the Advocates of Doctors-Commons.

The SECOND EDITION.

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M.DCC.LIX.

ADVERTISEMENT.

EVERY Purpoſe of the following Conſiderations will be anſwered in a Cauſe ſo national and important, as the Subject of them is, if it ſhould be judged, upon a Peruſal of them, that the Juſtification of the Conduct of Great-Britain may reſt ſafely upon any one ſingle Argument advanced in them; or if it ſhould be thought, that the *joint* Reſult of the whole Reaſoning eſtabliſhes the Propoſition which is intended to be maintained.

The Quotations which are placed in the Margin, and which are unneceſſary in themſelves to ſupport or recommend the Principles of common Senſe, are introduced merely as Authorities, diſintereſted and previous to the Object in Diſpute, from Foreigners to Foreigners.

THE CASE OF THE DUTCH SHIPS, considered.

IN the preſent War between England and France, the Subjects of Holland have no Right to cover the Property of the Enemy of England, going to, or coming from the Colonies of that Enemy, directly; nor indirectly to do it, thro' the Medium of the Dutch Colonies; nor to carry to the Colonies of France directly, nor indirectly, any Commodities, altho' Neutral Property, which have a Tendency to ſupport the Enemy.

They have no ſuch Right, by the common Principles of Neutrality.

They have no ſuch Right, by virtue of ſubſiſting Treaties.

By

By Writers upon Subjects of this Nature, of every Country, and of the higheſt Authority, and by the common Uſage of all Nations, it has been conſtantly DETERMINED,

That, in a War between two Nations, each Enemy may lawfully take, ſeize, and poſſeſs himſelf of the Property of his Opponent, wherever it can be found.

From this Principle it follows, eſpecially conſidering how widely Commercial Intereſts are diffuſed, that it is an actual Impoſſibility for two great, and Maritime Powers, to engage in a War, but the Intercourſe of all the reſt muſt be liable to be diſturbed.

In ſuch a Caſe, the Advantages of a Neutrality are neceſſarily mixed with Inconveniencies which muſt be ſubmitted to, or the Neutrality muſt be renounced.

If the Goods of Enemies may be lawfully ſeized wherever they are, then it follows, that they certainly may be ſeized on-board the Ships of Neutrals *.

Every Ship going to, or coming from, the Port of an Enemy, is ſtrongly attended with a Preſumption of Enemy's Property.

Neutrals cannot continue Friends, if they protect the Enemy, or Goods of Enemies; becauſe

* How far the States of Holland themſelves have carried this Doctrine in their own Conduct towards Neutrals, confiſcating both Ships and Cargoes, is to be ſeen from the Placarts quoted in the Appendix to this Caſe.

becauſe an impartial Conduct is the very Idea of Neutrality.

It is incumbent upon Neutrals to remove a Preſumption that is againſt them, by a Juſtification of themſelves, and by ſubmitting to a proper Enquiry, without Fraud, or Reſiſtance.

Neutrals therefore may be juſtly *detained*.

Neutral Property may be *confiſcated* as illegal in its Deſtination from relative Circumſtances *.

It is relative Circumſtances, which, by the conſtant Practice of Nations, have made all Commodities, which are deſtined for Places belonging to the Enemy, blocked up,

* ‘ Magnum ſane aliquando momentum in bellis habent ‘ etiam res minimi momenti, ſi hoſtis laboret inopia ; nec rerum ‘ iſtarum aliunde copia ſit. Sæpe urbes munitiſſimæ ob herbæ iſtius combuſtibilis, vel vini aduſti inopiam fecerunt, & ‘ famem facilius tolerare militem præſidiarium quam rerum ‘ illarum deſiderium. Quis ergo neget ? tum cives, tum *exteros* male mereri de Republica, qui talia ſuppeditant hoſtibus noſtris, ſine quibus facile adigi ad deditionem potuiſſent. ‘ Adeo verum eſt, belli temporibus, commercia non modo ‘ inter hoſtes ceſſare, verum etiam amicis & neutrarum partium gentibus non promiſcue permitti negotiationem cum ‘ hoſtibus, [niſi ſibi hæ ſecuritatem à belligerante utroque ‘ ſtipulentur.] Quum enim hoſti in hoſtem in infinitum omnia ‘ liceant quæ ad debellandum illum ſunt neceſſaria, licebit ‘ ſane & gentem amicam impedire quo minus hoſti res, quibus ‘ *validior* inſtructiorque ad bellum gerendum fiat, advehere ‘ poſſit, ſeu jam ſupra vidimus.

‘ Sin hoſtes noſtri cum gente extera nobiſque amica negotiantur, eo minus dubitare licet, quin fas nobis eſſe oporteat, illa commercia turbare, & id agere, ne quid ex illis ‘ *lucri* ad hoſtes noſtros redeat.’ Heinneccius. Sylloge 11. Exercitat. 30. §. 12.

up, or inveſted, to be conſidered as prohibitable in their Nature, or in other Words, contraband; becauſe they tend to uphold the Enemy under Circumſtances of Diſtreſs.

Commodities, the Property of Neutrals, having this Tendency, and deſtined for the Colonies of the Enemy, which are the Object of the War, and under Circumſtances of Diſtreſs, are therefore contraband.

Ships, the Property of Neutrals, may be confiſcated upon different Accounts; upon one, in view of Puniſhment of bad Faith, for a Breach of Neutrality in carrying contraband; upon another, when ſailing under the ſpecial Licence of the Enemy; as the adopted Property of the Enemy.

It appears, therefore, that the Subjects of Holland have no Right to trade with the Enemies of Great-Britain, without being ſubject to Enquiry at leaſt, nor in the unlimited Manner in which they now pretend to do it; ſo far as the Principles of mere Neutrality, and of the Law of Nations, are concerned.

Are they then privileged by ſubſiſting Treaties?

The whole Argument in their Favour is reſted intirely upon the Words of the Treaty of December $\frac{1}{11}$, 1674.

But, firſt, the Words of this Treaty do not eſtabliſh this Privilege without Exception.

2dly, The Words * of this Treaty muſt be judged to take their Meaning from the Things in view, and in the Intention of the Treaty.

3dly, The Queſtion is not to be grounded ſolely upon this Treaty, but all ſubſiſting Treaties muſt be referred to.

Laſtly, All Duties required by the Laws of Neutrality, and by ſubſiſting Treaties, muſt have been diſcharged by the Ally, who claims a Privilege under any Treaty.

Article I. *of the Treaty concluded at London, December* $\frac{1}{11}$, 1674, *between Great-Britain, and the United Provinces.*

From the Words of the Iſt *and* IId *Articles taken together, and with their natural and neceſſary Relations to each other, the Senſe of the whole appears to be.—*

That Free Traffic in all Kingdoms, Countries, and Eſtates ſhall be allowed to the Neutral.—

But

'It ſhall, and may Article I.
'be lawful, for the
'Subjects of the Lords
'the States, with all
'Freedom, and Safe-
'ty, to ſail, trade, and
'exerciſe all manner
'of *Traffic in all other*
'*Kingdoms, Countries,*
'*and Eſtates,* which
'now are, or at any
'time hereafter ſhall
'be at Peace, Amity,
'or Neutrality, with

 'the

* 'Senſum non vana nominum vocabula amplecti oportet.' L. 4. Cod. de Conſt. Pec. tit. 18.

'the Lords the States, 'ſo that they ſhall not 'be any way hinder- 'ed, or moleſted in 'their Navigation, or 'Trade, by the Mili- 'tary Forces, or Ships 'of War, or any other 'Veſſels whatever, be- 'longing either to the 'ſaid King, or his Sub- 'jects, upon account, 'or under pretence of 'any Hoſtility, or 'Quarrel now ſubſiſt- 'ing, or which may 'hereafter happen, 'between his ſaid Ma- 'jeſty, and any other 'Princes, or People 'whatever, which are, 'or ſhall be in Peace, 'Amity, or Neutra- 'lity, with the ſaid 'Lords the States.'

Article II.

But this Free Traffic aforeſaid in all Kingdoms, Countries, and Eſtates, allowed to the Neutral, ſhall extend to all Commodities which might

Art. II. 'Nor ſhall 'this Freedom of Na- 'vigation and Com- 'merce be violated, 'or interrupted by 'reaſon of any War; 'but

might be carried in time of Peace.—

Carried ‡ *whither, and from whence?*

To and from all Kingdoms, Countries, and Eſtates.

Carried by whom ‡*?*

By the Parties ſtipulating.

Contraband Goods only excepted from coming within the Extent of ſuch Free Traffic.

'but ſuch * *Freedom*
'*ſhall extend to all*
'*Commodities* which
'*might* be carried *in*
'*time of Peace*; thoſe
'only excepted, which
'are deſcribed, under
'the Name of Con-
'traband Goods, in
'the following Ar-
'ticle.'

The Argument therefore ſtands thus:

As Contraband is only excepted, from coming *within the Extent* of ſuch free Traffic to and from all Countries, Poſitively; ſo all that goes *beyond the Extent* of the Line drawn, is alſo excepted, Conſequentially.

The Product coming from French Colonies to Europe, are Commodities which could never yet be lawfully carried by Dutch Ships *in time of Peace*, directly nor indirectly; nor can it be ſhown that they will

* The Words of the Treaty are in Latin, as follows: 'Sed ad omnes merces, (*i. e.* mercaturæ objecta tranſporta-'tanda) quæ in Pace ſubvehentur,' *which ſhall be carried in time of Peace*, 'ſe extendet, exceptis ſolùm,' (not *ſolis*, but *ſolummodo*) 'iis quæ Articulo proximo,' &c.

‡ Vide Objection I. of the Dutch Expoſitor, at the End of this Caſe.

will hereafter ſo be carried: Therefore they cannot be carried *now*, by all the Words of this Treaty.

The ſame Reaſoning holds in the Caſe of Goods carried by Dutch Ships directly or indirectly, to the French Colonies.

For greater Clearneſs, to repeat Part of the Argument again, in other Words: The Terms of both Articles contain an Affirmative with a poſitive, particular Exception.

Affirmative.—What may be carried to and from all Countries in time of Peace, may be carried in time of War.

Poſitive, particular Exception.—Contraband only excepted.

And they contain a Negative by Inference, with an univerſal Exception.

Negative by Inference.—What may not be carried to and from all Countries in time of Peace, may not be carried to and from all Countries in time of War.

Univerſal Exception.— Only Contraband is always excepted from being carried.

If this is rightly ſtated; then the Contents of theſe two Articles do *lead* and controul all other Articles, whatever may be determined to be the Meaning of,

Article VIII. *But, in this Article the Senſe is, All the Objects of Commerce, free,*

Art. VIII. 'All that 'which ſhall be found 'put on-board Ships 'be-

free, as in the aforesaid Extent, and Things excepted are expreſſed; which Things being ſtopped or taken, all Things in general and ſpecial ſhall be done according to the Spirit, View, and Intention of the Articles going before, as well as according to the Letter of them.

'belonging to the 'Subjects of the Lords 'the States, ſhall be 'accounted clear and 'free, altho' the whole 'Lading, or any Part 'thereof, by juſt Title 'of Property, ſhould 'belong to the Ene-'mies of his Majeſty '(except always con-'traband Goods *) '*which* being *inter-'cepted, all Things* ſhall 'be done, according 'to the Meaning and 'Direction of the 'foregoing Articles.'

It appears, therefore, from all the Words, taken together, of the foregoing Articles, and from their natural Conſtruction, and Inference, that the Privilege, in the Extent, and Manner claimed by the Dutch Traders,

* The Words of the Treaty are: 'Quibus (*i. e.* rebus) 'interceptis (*i. e.* vel captis, vel detentis) omnia (*i. e.* res 'omnes) & *ſingulorum omnia* (*i. e.* intercepta, vel capta, vel 'detenta) ex Articulorum præcedentium, *Mente* & præſcripto 'fiant.'

'Quibus,' refers to all that went before; *ſcil.* 'Quicquid 'à ſubditis Dominorum Ordin. General. impoſitum eſſe *depre-'hendetur*:' 'totum id,' 'omne id quod navibus:' 'totum oneris, 'ejuſdem Pars aliqua:' '(Mercibus Contrabandis),' &c.

Traders, is not given by ſpecial Words; nor by Conſtruction.

If it is not given by ſpecial Words, but by Conſtruction, then it appears that the Words are *equivocal*, and *dubious* *.

Where Words are equivocal, and dubious, a Prohibitory Conſtruction is to be preſumed for, againſt a Conſtruction that is Permiſſive.

Extraordinary Stipulations are not to be interpreted in the utmoſt Latitude, where they are capable of a Conſtruction to the contrary; but are to be underſtood rather to contain a tacit Limitation †.

But an extraordinary Privilege, that ſubverts the common Principles of the Law of Nature and Nations, and which is ruinous in its utmoſt Extent of Conſtruction, is, *ſtricti Juris*, beyond all other Privileges; nor can it be given, but by ſpecial Words only.

Treaties are liable to tacit Exceptions, notwithſtanding Words ſeeming to be ſpecial.

For, to judge of Words, we muſt judge of Intentions.

Intentions are to be judged of from exiſting Circumſtances.

It

* 'Semper in obſcuris quod minimum eſt ſequimur.' L. 50. Dig. tit. 17. §. 9.

† 'Quæ extendit Interpretatio difficilius procedit quam quæ 'arctat.' Grotius de Jure Belli & Pacis, lib. 2. c. xxvi. par. 20. §. 1.

It has been diſputed, whether *any Treaty* whatever is of eternal Obligation; but that its Obligation extends no farther than to, *Rebus ſic ſtantibus* *; that is, to the ſame Objects exiſting, in a future time, as they exiſted, and were in view, at the time of making the Contract.

But a Commercial Treaty, which is very different in its Objects, and Conſequences, from a Treaty of Peace, extends no farther in its Obligation than to the general State of Commerce in exiſtence, and view at the time of contracting.

What was not in being, nor probable to be foreſeen, could not be in the View of the contracting Parties. What was not in view of the contracting Parties, was not in their Intention to make part of the Obligation.

Objects apparently ruinous to either of the contracting Parties, had they been exiſting, or probable to be foreſeen, would have been verbally excepted †.

But

* Vide the Anſwer of Queen Elizabeth to the Hanſe-Towns and States, 1595. Camden.

N. B. Seneca, who had no view to Political Caſes, but as reaſoning upon Moral Obligation, ſays, ‘ quicquid mutatur, ‘ libertatem facit de integro conſulendi;’ and proves it by many undeniable Examples in private Life, where a Change in the promiſing Perſon, or Circumſtances relating to him, alters the Obligation of the Contract. De Beneficiis, l. 4. c. 35, 39.

N. B. The Caſe of Queen Elizabeth was not relative to Peace and War, but to Privileges of Commerce, and to Subſidies.

† ‘ Quia caſus nec prævideri omnes poſſunt, nec exprimi, ‘ ideo libertate quadam opus eſt eximendi caſus, quos. quis

But Objects arising, *ex posteriori*, not from the common Course of Commercial Affairs, but from the mere *temporary* Act of Fraud and malicious Intention of the Enemy of any one of the contracting Parties, for his own Benefit and Preservation, but to the Detriment and Destruction of his Opponent, these Objects arising, *ex fraude* *, and, *ex posteriori*, are certainly, by every equitable Construction, excepted.

For, altho' it be true, that, *Res inter alios acta non nocet*; that 'what is transacted between two Parties does not prejudice a Third no ways concerned or interested;'

Yet, if it prejudices, the Rule is reversed; and then the Rule is, *Res inter alios acta non juvat*; that 'what is transacted between two Parties, but prejudices and concerns a third Party interested, shall not benefit either of the two Parties transacting, so far † as the Third is prejudiced.'

The

'qui locutus est, si adesset (*i. e.* si casus adesset) eximeret.' Grotius de Jure Belli & Pacis, l. 2. c. 26. par. 26.

* See the Marine Regulations of France in the Appendix, Articles X. and XI. how little the French will suffer any Advantage to be taken of Transactions between the Neutral and the Enemy, while the War is depending, as carrying with them a violent Presumption of Collusion.

† 'Circumventio alterius, alii non præbet Actionem.' L. 5. Dig. tit. 17. §. 49.

† 'Qui utitur Jure suo nemini debet facere injuriam.' L. 50. Dig. de Reg. Juris. l. 1. §. 12. Dig. de Aqu. & Aqu. Pluv. Arcend.

The Trade to the Colonies of each Nation in Europe was ſhut up to the Subjects of every other Nation by fundamental Laws of each particular State, Inviolably, as it was thought, at the time of making the Treaty of December $\frac{1}{11}$, 1674.

The Opening a Trade to the Colonies of France, *flagrante Bello*, is a Tranſaction between France, and the Subjects of Holland, to the Prejudice of England.

There was a Defect of every ſuch Object at the time of making the Engagement in queſtion between England and Holland.

This Trade, therefore, *ex poſt facto* *, cannot be opened in time of War to the Subjects of Holland; ſo as for them to carry it on by virtue of the Engagements ſubſiſting between England and Holland; prior not only to the Exiſtence, but even probable Exiſtence of this Object.

The Abſurdity † of an Object, no leſs than the Defect of an Object, proves a Defect of Intention.

* ‘ Si poſt ex intervallo aliquid extra naturam contractus ‘ conveniat, ob hanc cauſam agi non poteſt, propter eandem ‘ regulam, “ ne *ex* pacto actio naſcatur, quod & in omnibus “ bonæ fidei Judiciis eſt dicendum.” L. 2. Dig. 14. §. 7. De Pactis.

† ‘ *Reſtringens Interpretatio* extra verborum ſignificationem ‘ quæ promiſſionem continent, aut ex *defectu* petitur Originario voluntatis, aut ex caſus emergentis repugnantia cum voluntate. Defectus voluntatis originarius intelligitur ex *abſurdo* quod alioqui evidenter ſequeretur, ex ceſſatione rationis, quæ ſola plenè & efficaciter movit voluntatem, vel ex ‘ materiæ defectu.’ Grotius de Jure Belli, l. 9. c. 16. par. 22.

It never was, and never could be, the Intention of any contracting Parties, to subject the Meaning of their particular Contracts to the accidental Interpretation of their own Enemy. It was not therefore the Intention of either England or Holland.

By the Treaty of December $\frac{1}{11}$, 1674, was intended a Right to trade with the Enemy in time of War in such Places, and in such a Manner, as either of the contracting Parties might do by the Laws of the Enemy's Government, which are standing Laws in time of Peace.

If it is asserted, that by the Treaty of December $\frac{1}{11}$, 1674, was meant a Right to trade with the Enemy in every Place and in every Manner, *possible*, which it shall be in the Enemy's Inclination to allow in time of War;

Then it is asserted, that it was the Intention of the contracting Parties to bind themselves * by the Act of their own Enemy, to their great Prejudice, and perhaps to their Destruction; which cannot be admitted in Equity.

But whatever Privilege of free Commerce is conceded by the Treaty of December $\frac{1}{11}$, 1674,

* To see the Absurdity of this Argument and Assertion, it is proper to refer the Reader to the very Words of the Dutch Expositor himself, Objection IV. at the End of this Case.

'Non credendus est quisquam ad magnum suum incommodum se voluisse obligare.' Grot. de Jure Belli. L. 9. c. 16. par. 26.

1674, it was intended to be conceded to the State of the contracting Party, and to its Subjects, generally.

If the Enemy, for his own immediate and temporal Intereſt, pleaſes to give to certain particular Perſons, Subjects of any neutral Power, a Licence to trade to his Colonies; yet nevertheleſs, if an Enemy does not give this Liberty, as a general and *conſtant* Privilege, to the neutral State itſelf, but confiſcates all ſuch Ships of theirs as are found trading thither without that Licence, then that Licence is ſpecial and perſonal.

Therefore that ſpecial and perſonal Licence does adopt all thoſe who have it and their Property in the View of Subjects of that Government which grants the Licence.

A Dutch Ship trading to the Colonies of France, without a Licence from the French * Government, is confiſcated, as good Prize to French Captors.

Therefore all Dutch Ships ſo licenſed, are adopted French Ships.

The Privilege of the Treaty of December $\frac{1}{11}$, 1674, is minutely reciprocal in its Degree of Extent.

† The manner in which a reciprocal Privilege is enjoyed in the firſt Inſtance, eſtabliſhes a Precedent for its Extent in a ſecond Inſtance.

A

* Theſe Licences are ſigned by the King himſelf, and differ greatly from the common Paſſes granted by the High-admiral of France, for Voyages in Europe.

† ' Semper in ſtipulationibus, et in cæteris contractibus id ſequimur quod actum eſt.' L. 50. Dig. tit. 17. §. 34.

A Precedent eſtabliſhed is unalterable, or its Degree of Reciprocality is deſtroyed.

After the Concluſion of the Treaty of December $\frac{1}{11}$, 1674, Holland continuing the War with France, the Subjects of Great-Britain had the Benefit of a free Trade with France, till the Year 1678, when the Peace of Nimeguen was concluded.

But the Subjects of Great-Britain have not, at any time, enjoyed the Benefit of this Privilege in the Extent, which the Subjects of Holland now claim it for themſelves.

The Subjects of Great-Britain never traded to the Colonies of France.

If Great-Britain *has* enjoyed a more extenſive Benefit from the Privilege, in a former Inſtance, than ſhe *will* now allow to Dutch Subjects, Holland *has been* injured.

If Dutch Subjects *ſhall* enjoy now a more extenſive Benefit from the Privilege than Great-Britain *has* enjoyed in a former Inſtance, Great-Britain *will* be injured.

Such free Trade, as the Subjects of Great-Britain enjoyed at *that* time, is reciprocally to be permitted *now* to the Subjects of the States-General, and no other.

But the Intentions of a Treaty do not more ſubject it to a reſtrictive Interpretation, than it is reſtrained by other ſubſiſting Treaties, equally in force.

That

That a Treaty ſhould not ſubſiſt in force, it muſt be abrogated, ſpecially *, by a ſubſequent Treaty.

The Treaty of February $\frac{9}{19}$, 1673-4, is not abrogated by any Treaty.

All Treaties, ſpecially revived, draw their Force from the Act of Revival.

No Treaties therefore, which are revived, have greater Authority, as being prior, or poſterior, in order of Time, but are as one Treaty from the Act of Revival.

The Treaty of February $\frac{9}{19}$, 1673-4, is a revived Treaty.

The Force of an Act of Revival is beſt ſeen from the Words of the Treaty of Seville, acceded to by the States-General, November 21, 1729.

Article I. ‘ All former Treaties, and ‘ Conventions of Peace, and of *Commerce*, ‘ concluded between the contracting Parties, reſpectively, ſhall be, as they hereby ‘ are, *effectually renewed*, and confirmed, in ‘ all thoſe Points which are not derogated ‘ from by this preſent Treaty, in *as full* ‘ *and ample manner as if the ſaid Treaties* ‘ *were here inſerted word for word*, the ſaid ‘ Parties promiſing not to do, or ſuffer any ‘ thing to be done, which may be *contrary* ‘ *thereto* directly, or indirectly.’ George II. 1729.

Not

* Thus the Treaty of October 29, 1709, between Great-Britain and the States-General, is abrogated by expreſs Words in the Treaty of January $\frac{19}{30}$, 1712-13.

Not only by the laſt mentioned Treaty of Seville, but by the Article, Hague, December 30, 1675, which is *relative* to and *explanatory* of the Treaty of February $\frac{9}{19}$, 1673-4, as of a Treaty ſubſiſting in full Vigor, but by the Preamble to the Treaty of Windſor, Auguſt 17, 1685.

James II. 1685.

By the Treaty of Whitehall, Auguſt 24, 1689, Article II.

William III. 1689.

By the Treaty of Utrecht, January $\frac{19}{30}$, 1712-13.

Anne 1712-3.

By the Treaty of Weſtminſter, February 6, 1715-16, Article II.

George I. 1715-16.

By the Treaty of Weſtminſter, May 27, 1728.

George II. 1728.

By the Treaty of Vienna, acceded to by the States-General, February 20, 1731-2.

George II. 1731-2.

By all theſe Treaties ſeverally, the Treaty concluded between Great-Britain and the States-General, February $\frac{9}{19}$, 1673-4, is ſpecifically named, approved, and confirmed.

Charles II. 1673-4.

The ſecret Article of this Treaty of February $\frac{9}{19}$, 1673-4, is as follows:

'Neither of the ſaid Parties ſhall give, 'nor conſent that any of their Subjects, or 'Inhabitants, ſhall give any *Aid*, *Favour*, or '*Council*, directly, or indirectly, by Land, 'or by Sea, or on the freſh Waters, nor 'ſhall furniſh, nor conſent that the Sub-'jects and Inhabitants of their Dominions 'and Countries, ſhall furniſh any Ships,

'Soldiers,

‘ Soldiers, Mariners, *Proviſions*, *Money*, ‘ Inſtruments of War, Gun-powder, or any ‘ *other thing neceſſary* * for making War, to ‘ the Enemies of the other Party; and the ‘ preſent Article ſhall have the ſame Force ‘ and Virtue, as if it had been included in ‘ the ſame Treaty.

This Treaty of Peace and Alliance, February $\frac{9}{19}$, 1673-4, was the Baſis and Preliminary to that of Commerce, December $\frac{1}{11}$, 1674, the preſent Object of Contention.

Both Treaties are conſidered in the View of one Treaty by the Article, which is explanatory of them both, Hague, Decemb. 30, 1675. Both are equally ſubſiſting, and in force: Yet each Treaty being contradictory to the other, how is the Queſtion to be determined?

A poſitive, but permiſſive Article, muſt yield to a contrary Article that is equally poſitive, but negative.

If we determine more favourably, the Point in Debate between them muſt be *left open to common Principles of Neutrality*, as undecided by equally ſubſiſting Treaties; and in reſpect of Things nominally ſpecified

* The Words of this Treaty are in Latin, as follows, and point out a relative Contrabandity, (if I may uſe ſuch an Expreſſion) from Circumſtances of Neceſſity.

‘ Neque ſubminiſtrabit, nec ſubminiſtrari conſentiet, victu- ‘ alia, aut ulla alia *ad bellum faciendum neceſſaria* (neceſſary *in* ‘ *order* to make War) hoſtibus alterius partis.’

in both Treaties, thoſe Articles which are in their Terms mutually deſtructive of each other, muſt be withdrawn out of the Queſtion, as neceſſarily * null and void.

Article IV. *Treaty, December* $\frac{1}{11}$, 1674, *ſubſiſting.*

Proviſions, Gold, and Silver, coined and not coined, all Sorts of Metals and Naval-ſtores	To be carried free to the Enemy of either Party.

Secret Article Treaty, Feb. $\frac{9}{19}$, 1673-4, *not abrogated, but revived and ſubſiſting.*

Victuals, Money, and any other thing (beſides Inſtruments of War) neceſſary for making War, to the Enemy	Not to be carried to the Enemy of either Party.

The Dutch claim an Extenſion of carrying free, not only the above Commodities, but all others, being Enemy's Property, in every Place and Manner *poſſible*, at any time, by a pretended Conſtruction of the Words of the Treaty of Commerce, December $\frac{1}{11}$, 1674.

The Treaty of Peace and Friendſhip, February $\frac{9}{19}$, 1673-4, founds the Eſſence of all Alliance, poſitively, upon no Aid, nor Favour,

* 'Ubi pugnantia inter ſe juberentur, neutrum ratum eſt.' L. 50. Dig. tit. 17. §. 183.

Favour, nor Counſel, being given to the Enemy of the other Party.

If the Conſtruction and Extent claimed, is admitted, all Confidence, as between Allies, is deſtroyed; the Enemy enfeebled is favoured, aided with Counſel, and ſupplied with Means, to carry on a * long and bloody War; the Trade of his Colonies is ſecured, which are the Object of the War; the Mariners and Veſſels before engaged, of Neceſſity, in the Buſineſs of Commerce, are employed to complete the Armaments of the State, and the Ally of the Neutral may be ruined, beyond Recovery, although now ſuperior.

But this conſtructive Privilege of covering the Property of the Enemy, in ſo extenſive and ruinous a Manner, is contrary to a poſitive Declaration of a ſubſiſting Treaty, and is granted in ſpecial Words by no Treaty; therefore we muſt reject the Claim to this Extenſion, or we muſt allow that which is leaſt ſupported.

Whatever is the Meaning of the Treaty of December $\frac{1}{11}$, 1674, the ſame is the Meaning of the explanatory Article of Auguſt 30, 1675, as to the Object of Commerce out of Europe, which is the Queſtion.

If the Treaty of December $\frac{1}{11}$, 1674, means only Freedom of Traffic *in Europe*

 with

* See p. 24 of this Caſe, and the Note.

with the Enemy, then the Explanatory-article means only a Freedom of Traffic, from an Enemy's Port to an Enemy's Port, in Europe.

No Argument therefore can be drawn in favour of the Privilege, as claimed by the Dutch in its Extent, of a Free-trade to the Enemies Colonies in time of War, from this Article, independently of the Treaty of December $\frac{1}{11}$, 1674.

The ſame Reaſons that hold againſt the Extenſion of the Privilege without ſpecial Words, in the Treaty, hold againſt the Extenſion of the Privilege without ſpecial Words, in the Article.

The Explanatory-article itſelf proves againſt any Privilege to be extended by Conſtruction, without ſpecial Words.

If an additional Explanatory-article was abſolutely neceſſary to extend the Freedom of Commerce, permitted in general Words by the Treaty, in one Step, then is another ſpecifical and additional Article equally neceſſary now, to extend it ſtill farther in another Step.

The laſt Queſtion remains:

'In the preſent War between England
'and France, have the Subjects of Holland
'diſcharged their Duty, in the Relation
'which they bear to England as Neutral-
'friends and Allies, ſo as to entitle them to
'any Benefit of Neutrality, or to the Privi-

'leges

‘ leges that are ſuppoſed to belong to them,
‘ by any Treaty?’

The Privilege of Free-commerce with the Enemy does not extend by Treaties to America.

The Dutch are therefore upon the Footing of mere Neutrals in America.

Neutrals not carrying Enemy's Property, nor Contraband, nor lending their Names with a fraudulent View to conceal; nor doing any Act that is fraudulent in its Intention or Appearance, are not liable to any Confiſcation or Expences attending the Conteſtation of their own Property: But otherwiſe theExpences, attending the Proofs, neceſſary to remove the Preſumptions that ariſe againſt them, from their own Act, ought to be charged to their Account, although they ſhould be releaſed.

And no Concluſion is to be drawn from a Number releaſed, that therefore they were unjuſtly detained, or charged with the Expences of Conteſtation.

But the Dutch have lent their Names to French Subjects to cover French Property.

The Dutch ſailing to French Colonies, have feigned * Voyages to their own Colonies, to defraud and fruſtrate the Subjects of England, in the lawful Purſuit of their Right,

* ‘ The Precaution taken of feigning Expeditions to our
‘ own Colonies,’ Dutch Expoſition, p. 9.

Right, and in the Proſecution of a juſt War.

The Dutch have carried Proviſions from Britiſh Ports to the Enemy, under pretence of Property deſtined to Neutral-ports *.

The Dutch have ſuffered their Territory to become the Channel and Repoſitory of the Commerce, and even the Arſenal of Military-ſtores and Neceſſaries of the Enemy of England; and have aided and counſelled the Enemy, in every Method that might complete his Voyages through their Medium, with Safety, as they hoped, to him, and Impunity to themſelves.

The Dutch have ſailed to and from the Enemy's Colonies, in the View of naturalized or adopted French.

Special Permiſſions from the French Government have ſuſpended in their Favour, *flagrante Bello*, the eſtabliſhed and fundamental

* It is certain that the Dutch Trade, to and from the Colonies of France under theſe Circumſtances, is a Contraband-trade, although many of its Objects are of a promiſcuous Nature, if theſe Circumſtances are parallel to this Deciſion of Grotius.

'In tertio illo genere *uſus Ancipitis*, diſtinguendus erit *Belli* '*Status*. Nam *ſi tueri me non poſſum* niſi quæ mittuntur inter-'cipiam *neceſſitas* jus dabit. ſed ſub onere reſtitutionis, *niſi* '*cauſa alia* accedat (ſcilicet, hæc cauſa quæ ſequitur.)

'Quod ſi juris mei executionem rerum ſubvectio impedi-'erit, idque ſcire potuerit qui advexit, ut ſi deditio vel *Pax* 'expectabatur tenebitur ille, ut qui *debitorem carceri exemit*, '*aut fugam* ejus in fraudem *meam* inſtruxit. Et ad damni dati 'modum *res quoque ejus* capi, et dominium earum debiti con-'ſequendi cauſa quæri poterit.' De Jure Belli, L. 3. c. 1. par. v. §. 3.

fundamental Laws of the Enemy's State in time of Peace, without which they could not ſail to the French Colonies, but would be condemned when taken, as Prize to French Subjects.

So far therefore as any one of theſe Circumſtances is true, ſo far are particular Dutch Subjects liable to all Inconveniences reſulting from every Act of their own, inconſiſtent with the Idea of Neutrality, with the Law of Nations, and the Rights of true, unmixed Hollanders.

By the ſubſiſting Treaty of Weſtminſter, March 3, 1677-8, of perpetual Alliance and Defence, renewed and confirmed by all the Treaties which renew and confirm the Treaty of February $\frac{9}{19}$, 1673-4, there is ſtipulated between the King of Great-Britain, for himſelf and Succeſſors, Kings of Great-Britain, and the States-General, Confederacy with the Confederates, and Enmity with the Enemies of each other, as follows:

Article IV. 'The mutual Obligation of 'aſſiſting and defending one another is to be 'underſtood, and doth extend to the Con- 'ſervation and Maintenance of his Majeſty 'and the ſaid Lords the States-General, 'their Countries and Subjects, in all their 'Rights, Poſſeſſions, Immunities, and Li- 'berties, (as well in reſpect to Navigation 'as Commerce, and every thing elſe, both The Fact.

The Fact.

‘ by Sea and Land, which ſhall be found
‘ to belong to them by common Right, or
Minorca invaded and taken.
‘ have been acquired by Treaties already
‘ made, or to be made in the manner
Avowed and notorious Preparations for the Invaſion of Great-Britain or Ireland, ſo that the Enemy's Intention could not be doubted.
‘ aforeſaid) *with and againſt* all Kings and
‘ Princes, Republicks and States. So far
‘ forth, that if his Majeſty, or the ſaid
‘ Lords the States, in prejudice to the ſaid
‘ Tranquillity, or preſent or future Neutra-
‘ lity, ſhall hereafter be *attacked*, or in any
‘ manner whatſoever *diſturbed* in the Poſ-
‘ ſeſſion and Enjoyment of their Eſtates,
‘ Territories, Towns, Places, Rights, Im-
‘ munities, and Freedom of Commerce,
‘ Navigation, or any thing elſe, which his
‘ Majeſty, or the ſaid Lords the States-
‘ General now enjoy, or ſhall hereafter
‘ enjoy by common Right, or by Treaties
‘ already made, or which may be made as
‘ aforeſaid; his Majeſty, and the ſaid Lords
‘ the States-General, as ſoon as they are in-
‘ formed of it, or required thereto by each
‘ other, ſhall do all they poſſibly can, con-
‘ jointly to terminate the Troubles or Ho-
‘ ſtilities, and procure Reparation to be
‘ made for the Loſs and Injuries done to
‘ one of the Allies.’

Article V. ‘ And in caſe the ſaid *Attempt*
‘ or *Trouble* be ſeconded by an open Rup-
‘ ture, that Party of the two Allies, who
‘ is not attacked, ſhall be obliged to break
‘ with the Aggreſſor in *two Months*, imme-
‘ diately

'diately after the Party that is already at Rupture ſhall *require it*; during which time he ſhall uſe all his Endeavours by his Embaſſadors, and other Miniſters, to mediate a juſt Accommodation between the Aggreſſor and Diſturber, and the Party firſt attacked or moleſted; and yet ſhall *in the ſaid time* give powerful Aſſiſtance to his Ally, ſuch as ſhall be agreed upon between his Majeſty, and the ſaid Lords the States-General; the which, though there had been no mention made of them in this Article, ſhall be kept and obſerved, as if they had been inſerted and ſet down therein. It being already left to the Choice of that Party of the Allies, which ſhall be at Rupture, to continue to enjoy the Benefit of the ſaid Succours, in caſe the Conjuncture of the Times, and the State of his Affairs ſhall make him prefer *the Effect* before an open Rupture of his Ally with the Aggreſſor.'

The Fact.

No Declarations made by the States-General to the Enemy, that they could not permit any ſuch Attempts without affording their Ally ſuch Succours as they were bound to furniſh.

Separate Article.

Demanded, not complied with, nor any Act done, at the time of Requiſition toward complying, or even toward ſhewing an Inclination to comply.

The States to ſend ſix thouſand Foot well armed, with twenty Men of War well fitted up and victualled.

Beſides the Stipulations of this Treaty, *Requiſition being* made, Succours as above are to be ſent to ſecure the Succeſſion of the Houſe of Hanover, *in conſequence of the Requiſition*. Treaty of Utrecht, Jan. $\frac{19}{30}$, 1712-13.

Anne 1712 3. Article XIV. 'The States-General ſhall, 'at *the Requeſt* of her Majeſty, *&c.* furniſh 'the Succours hereafter mentioned, to make 'good the Guarantee of the Succeſſion of 'the Crown of Great-Britain.'

It appears, in both the above-mentioned Treaties, that the Party requiring is to judge of his own Neceſſity. In the laſt mentioned Treaty he is to judge of the Danger of the Barrier, or of the Succeſſion.

The Requiſition makes the Succour ſtipulated to be due, according to the Words of both the Treaties.

Notorious or avowed Preparations, on the Part of a declared Enemy, to attack or invade, neceſſarily endanger the Object guaranteed, and are a Foundation for the Requiſition: Great-Britain therefore is entitled, in ſuch a caſe, to Succours by both Treaties.

But it is contrary to the Intention of the Contract, that the Party who is to ſuccour, ſhould judge of the Foundation for requiring it.

If it relied upon him, he would have it in his Judgment and Power to ſuccour or not,

not, and the View of the Contract might be fruſtrated.

If he is * unable, a temporary Inability may be remedied, and it is in his Power.

If a perpetual Inability prevents his giving the Aſſiſtance ſtipulated, the ſame Inability prevents his receiving any Benefit ſtipulated.

The Non-performance † of part of an Alliance, is a Diſſolution of the Whole, whatever are the Reaſons.

The Dutch therefore, as a Republic, having done no one Act towards complying with the ſeveral Duties which are placed to their Account by the Spirit and by the Letter of every ſubſiſting Treaty; and their Subjects being guilty of uſing every Fiction that is contrary to good Faith in their Tranſactions with the Enemies of Great-Britain, they have forfeited all Title to the expreſs Privileges of any Treaty; much leſs, under theſe Circumſtances, can they claim a Privilege founded only upon one Treaty (if it is founded at all) by a forced and falſe Conſtruction.

* Notwithſtanding their own Danger, the Dutch States have neither augmented their Marine nor Army.

† ‘ Si pars una fœdus violaverit, poterit altera à fœdere ‘ diſcedere, nam capita fœderis ſingula conditionis vim ha- ‘ bent.’ Grotius de Jure Belli & Pacis, lib. 2. c. 15. par. 15.

Λυέσι τὰς ξπονδὰς ὁι μη βοηθοῦντες ὁις ἂν ξυνομόσωσι ὅτι δε ἂν τούτων παραβαίνωσιν ἑκάτεροι καὶ ὁτιοῦν τότε λελύσθαι τὰς ξπονδάς. Thucyd. Hiſt. l. 1. Belli Peloponneſiaci.

To conſider the Objections.——

Summary Expoſition of the Caſe of the Dutch Ships. Amſterdam. Page 12.

Objection I. The applying Kingdoms, Countries and Eſtates, from the Iſt Article, to Commodities in the IId Article of the Treaty of December $\frac{1}{11}$, 1674, is unfaithful, and without Foundation.

Anſwer. It appears to be otherwiſe, from the View of the Iſt and IId Articles, as relative to each other.

Expoſition, Page 9.

Objection II. The Propoſition of Article II. *But this Freedom of Commerce ſhall extend to all Commodities which might be carried in time of Peace,* is to be conſidered in its Connexion and Totality.

Anſwer. It has been conſidered ſo. Proof Objection I.

Expoſition, Page 8.

Objection III. If *ſuch Commodities as may not be carried into all Countries in time of Peace, may not be carried in time of War, without Confiſcation,* then, Muſlin and Printed Callicoes carried into France would be deemed a lawful Prize to an Engliſh Captor; by the Conſequences of this Propoſition, which is maintained, in Juſtification of the Conduct of Great-Britain.

Anſwer. If a Propoſition is true in relation to one particular Fact, it is not to be argued againſt from its Conſequences, when applied to another particular Fact.

If this Propoſition is true, ſo far as it relates to the Words of the Treaty on which it is founded, and to the Caſe of the Dutch

trading

trading in America to the Colonies of France, it is not leſs true in that relation, becauſe it may not be true in the Caſe of a French Smuggler, and in Europe, which may be different.

But it may be true with reſpect to a French Smuggler. There may be no Abſurdity in the Conſequence, nor any Injury to the Dutchman.

The Objection itſelf proves, that the Goods of a Smuggler *(being a Frenchman)*, would not be protected by the Ship of a Dutchman, *from the Words of the Treaty*, which is the Conſequence we are charged with. The Goods of a Neutral Smuggler are out of the Queſtion. The Goods of Enemies are the Object of the Treaty.— We may therefore allow the Conſequence, I believe, without overthrowing the Propoſition, which is ſaid to be abſurd, and therefore not true, upon account of this Conſequence.

Objection IV. The Prohibition or Permiſſion of the Commerce in queſtion, is not the Matter of any Engagement between England and Holland, and it never had any Relation to them; but depends ſolely on his Moſt Chriſtian Majeſty's Will. Expoſition, Page 8.

Anſwer. If it is not the Matter of any Engagement between England and Holland, then neither England or Holland are bound by it; the Affirmative of which the Author

of

of this extraordinary Aſſertion intended to prove.

Expoſition, Page 9.

Objection V. The ſame right and ſuppoſed Meaning of the Treaty of 1674, which entitles the Engliſh to make Prize of Dutch Ships trading to French Colonies in America, might have entitled the Dutch to have made Prize of the Aſſienta Ship of the Engliſh South-ſea Company, when the States continued the War with Spain, after the Peace concluded between England and Spain at Utrecht, July $\frac{2}{13}$, 1713, till about June 26, 1714, when Peace was concluded between Holland and Spain.

Anſwer. This is arguing from Conſequences againſt a Thing that is true, from a Suppoſition of a Thing that may not be true, nor ſimilar in all Points, as it was anſwered to *Objection* III.

It would be ſufficient to ſay, if the Dutch might have taken the Aſſienta Ship conſiſtently with the Treaty in queſtion, they would have been juſtified in doing it.

But the Caſe anſwers itſelf. It was the Ship of the South-ſea Company, the Goods the Property of the South-ſea Company; it was not a Ship licenſed by a particular perſonal Permit, but it ſailed under the Sanction of a National Treaty; nor were the Goods on-board the Goods of the Enemies of Holland.

But

But laſtly, the Caſe never exiſted, to exerciſe the Indulgence of Dutch Captors.

Therefore no reciprocal Indulgence can be claimed for Dutch Traders in the preſent Queſtion.

It appears from the Convention of Madrid, May $\frac{15}{6}$, 1716, that the Aſſienta Ship never ſailed during the War between Holland and Spain. Geo. I. 1716.

The Words are, Paragraph 8.

'As to the yearly Ship, and which they 'have not ſent to the Indies in the Years '1714, 1715, 1716, his Catholic Majeſty 'is pleaſed to make the Company amends.'

That it did not ſail in the Year 1713, and the Reaſon, appear from Paragraph 6.

Objection VI. France does not confiſcate Spaniſh, Swediſh, Daniſh, Hamburgh, or Dutch Ships bringing Merchandiſes to England. Expoſition, Page 10.

Anſwer. They do not carry Merchandiſes from Engliſh Colonies to Europe. But France, with very great Severity, confiſcates Dutch Ships for Reaſons that Engliſh Courts of Admiralty have with Tenderneſs conſidered, only as juſt Cauſes of detaining *, and of Expences, hitherto; in which Regulations of France, whether juſtified by the Law of Nations or not, the Dutch Government

* See in the Appendix to this Caſe, the Marine Ordonnances of France preſented to the States of Holland.

ment have acquieſced; and they are *become the Law of Nations* to them by their own Acquieſcence, in all Caſes where Treaties do not extend, or operate between them and their Ally the other Party at War; who, in ſuch Caſes, may, whenever he pleaſes, in all future Deciſions, refer to theſe Regulations too, *as the Law of Nations*, acquieſced in by the Neutral, and as equally binding in the Favour of the Ally; ſince he has a Right to be put upon a Level with his Enemy, whether he demands it, or not, of the Neutral.

Expoſition, Page 12.

Objection VII. The Engliſh Government have in their Power to put a Stop to ſuch Proceedings againſt the Dutch Traders, without referring them to the tedious and ſo very expenſive Courſe of Ordinary Juſtice.

Anſwer. In Deſpotic Governments, as in Turkey, Judicial Proceedings are ſhort and precipitate, becauſe they are arbitrary. Engliſh Subjects, committing Acts of Piracy, are apprehended and tried in ſuch Caſes, by Law; nor can they otherwiſe be tried or puniſhed. As to Expences, no Dutch Ship detained, having produced all authentic Proofs of a truly Neutral Property and Conduct, and of the ſtrict Obſervations of Good Faith in every Act, is, or ever * was

* I beg leave to obſerve, that the Conceſſion made inadvertently by the Author of the *Reſponſe au Memoire*, is not grounded

was burthened with Expences of Conteſtation; but, on the other hand, is entitled to Demurrage; and the Captor, who has unjuſtly, and without *probable Cauſe*, at his own Peril, detained the Neutral, is puniſhed with full Coſts, and liable to every other Puniſhment that may reſult from Diſobedience to the Inſtructions of his own Government, which he is bound by every kind of Obligation to obey.

Objection VIII. The Sentences of the Engliſh Courts of Admiralty have been over-haſty, arbitrary and unjuſt. Expoſition, Page 12.

Anſwer. That the Sentences of the Engliſh Courts of Admiralty have been over-haſty, is anſwered by *Objection* VII.

That they are unjuſt and arbitrary, is not true: For they decide by Evidence out of the Mouth of the Captured Party, and not of the Captor, whoſe Evidence, as well as the Evidence of third Perſons, is never admitted, but where no other Proof can be had; as when the Captured abſcond, or have deſtroyed all the Papers. The Evidence * of the Ship's Crew, and the Ship's Papers,

grounded upon Fact.—'Je ſouhaiterois ſeulement qu' on 'peut trouver quelque expedient pour empecher que les Hol-'landois agiſſant *de bonne foi*, fuſſent ſujets a payer *des fraix* 'de procedures dont ils ne ſont coupables. C'eſt un grief 'je l'avoue: on pourroit le juſtifier; mais il vaudroit mieux 'l'oter.'—P. 8. Reſponſe au Memoire.

* See the Royal Inſtructions, June 4, 1756. Article IV. And the Act of Parliament for the Condemnation of Prizes, 1756.

Papers, jointly condemn, or acquit: If they contradict one another, farther Proof is indulged to be brought by the Claimant; from the Defect or Neglect of which, if he ſuffers, it is with Juſtice—But the Engliſh Courts of Admiralty decide not by the Laws of England, with regard to Ships or Cargoes detained as Prize of War, any farther than thoſe Laws co-incide with the Principles of Law *acknowledged by all Nations*; which are the Foundation of their Decrees; they have no Intereſt between the Parties, but are entirely independent and remote, as are all other Engliſh Courts of Juſtice, from the immediate Direction of the Throne, in particular Caſes, unleſs where there are Inſtructions previouſly exiſting, before ſuch Caſes came before them; and which Inſtructions are in conſequence of an Act of Parliament. They are therefore not leſs the Courts of the Captured, than of the Captor. Nor are any Ships, or Property of Neutrals, detained in the preſent War, yet, properly ſpeaking, Prize, tho' condemned in one Court of Admiralty; if the Claimants do not forego of themſelves their Right of Appeal. There is a Court of Review in the laſt Reſort, conſiſting of Perſons of the higheſt

See alſo the Letter of his Grace the Duke of Newcaſtle; and the Anſwer to the Memorial of the Pruſſian Miniſter, from p. 10. to p. 17. London, 1753.

higheſt Rank and Underſtandings, to do complete and ample Juſtice between all Parties.

Objection IX. In Courts of Appeal in the laſt War, there were Caſes determined favourably with reſpect to the Dutch trading to the Enemy's Ports.

Anſwer. In Deciſions that were made after the laſt War was ended, there may perhaps have been Inſtances of one or two Dutch Ships trading to the Enemy's Colonies, with great Lenity releaſed, under particular Circumſtances; adjudged, nevertheleſs, to pay all Coſts to the Captor. But in National Cauſes *, under different Circumſtances and with different Conſequences, and de-

* It is by no means the Spirit of the Roman Law, or of the Law of Nations, to reſt upon Precedents.

'Non Exemplis ſed Legibus Judicandum eſt.' L. 13. Cod. & inter l. omn. Judic.

'Licet is qui Provinciæ præeſt omnium Romæ Magiſtratuum vice & officio fungi debeat, non tamen ſpectandum eſt 'quid Romæ factum eſt, quam quid *Romæ fieri debeat.*' L. 12. Dig. de Officio Præſidentis.

'Senatus non ligatur ſuis anterioribus Sententiis, quin va'leat poſtea in contraria judicare, Chriſtinæus.' Vol. I. Deciſ. Concilii Mechliniæ.

'Argumentum à ſimili eſt multum fragile & infirmum, nec 'procedit quando datur diſſimilitudo etiam parva.' Everard. Topic. loc. à ſimili, §. 2.

'Res per ſe valde eſt pernicioſa, exemplis non legibus ju'dicare, cum ex leviſſimâ perſonarum, vel locorum, vel tem'porum judicia mutantur.' Bodinus de Republ. l. 6. c. 6.

'Mutatis hominibus quid obſtat mutari Sententias?' Bynkerſhoek. Quæſt. Juris Publici. L. 1. c. xi. p. 92. Ed. 1752. Leyden.

determined by different Perſons, at different Times, there may very juſtly be different Determinations. For all Deciſions in former Caſes, are but ſo many Inferences from Principles; and therefore cannot have any Authority farther than the Principles themſelves ſhall be found to have Authority, upon a fuller Examination. But in the laſt War, Holland had entered into the Confederacy; her Troops had taken the Field with thoſe of Great-Britain, againſt the common Enemy; and ſhe had ſent the Succours ſtipulated, immediately, ſuch as they were, upon Requiſition made. The contrary is the Caſe now, in every Particular.

Expoſition, Page 13.

Objection X. No Warning nor Caution was given.

Anſwer. There was no Ground for Notification. If the French Government had granted to the States of Holland generally, the *perpetual* Privilege of a free Trade to her Colonies in Peace and in War, by ſolemn Treaty, prior to the preſent War, and had not granted a *temporary* Privilege, *ex poſt facto*, to Dutch Subjects particularly, then it might have been expedient for Great-Britain to have oppoſed her Proteſtation, and to have notified, that in caſe of a War breaking out, ſhe would not be bound conſequentially, nor prejudiced by that Treaty; becauſe otherwiſe ſhe would have

have been eſteemed to have acquieſced in it.

But the Caſe is totally upon a different Footing, as it appears from Facts.

2dly, There was no Ground to notify to the Dutch Government, what was underſtood to be the Extent of that Privilege of Free Trade, which is granted to them, and which they are ſtill allowed, by the Treaty of December $\frac{1}{11}$, 1674.

There was a *known* Precedent for the Extent of the Free Trade which Holland might, and ſtill may carry on with the Enemy in time of War, by the Example of that which was carried on by the Engliſh with France from the Year 1674 to 1678, during the War between Holland and France; therefore there was no need to notify concerning a Trade, a Precedent of which was already notorious; and which was not expected to be carried on in ſo extenſive a Manner, as to render all Lenity and Indulgence impoſſible, and the *leaſt Delay to impede it*, dangerous and fatal.

Laſtly, There are Times, Diſpoſitions, and Circumſtances, when ſuch Notices might be conſtrued as amounting to a Declaration of War; and of thoſe Times, Diſpoſitions, and Circumſtances, the Governing Powers are the ſole and proper Judges, as they are

of

of the Inconveniencies and Dangers which may reſult under ſuch Views to the State, and to their own Country; by the Exigencies of which they will moſt certainly be guided, as they will moſt certainly be juſtified.

A P-

APPENDIX.

THE States of the United Provinces, in their Wars with other Countries, have, at different Times, interdicted all other Neutral States any Communication with the Enemy, whatever, under Pain of Confiſcation of both Ships and Cargoes.

In Proof of which are the Placarts, publiſhed July 27, 1584, April 4, 1586, Auguſt 4, 1586, June 26, 1630, and December 5, 1652.

In the Placart of June 26, 1630 *, are the following Words:

Article I. ‘ Dat Schip en goed van Neu- Article I.
‘ tralen, in of uyt vyandelike havenen in
‘ Vlaanderen komende, of zoo na dezelve
‘ zynde,

* ‘ Satis defendi poteſt rigor ejus Decreti,’ 26 June, 1630. Bynkerſhoek. Quæſt. Juris Publ. Ed. 1752. Printed at Leyden, l. 1. c. xi. p. 91.

‘ zynde, dat ongetwyfelt is, dat zy daar in
‘ willen loopen, geconfiſqueert zullen wer-
‘ den, om dat haar Hoog Mogende de
‘ voorſchr, havenen met Oorlog ſchepen
‘ continuelyk *beſet* hoouden, om de com-
‘ mercie met dan Vyand aldaar te beletten,
‘ 't welk van ouds in gebruyk is geweeſt,
‘ op't exempel van alle Princen, die ook
‘ gelyk regt in zodanige gevallen ge-
‘ bruyken.’

Article I. Art. I. ‘ *Neutral Ships and Goods* paſſing
‘ in or out of the Ports of the Enemy in
‘ Flanders; or *being ſo near them*, that there
‘ can be no Doubt but they will go into them,
‘ *ſhall be confiſcated:* Becauſe their High
‘ Mightineſſes continually *beſet* thoſe Ports
‘ with Ships of War, in order to hinder *any*
‘ *Commerce* with the Enemy. Which has
‘ been an ancient Cuſtom, warranted by the
‘ Example of all Princes.’

Article II. Art. II. ‘ Indien uyt de vraght brieven,
‘ of andere beſcheiden bleek, dat de ſche-
‘ pen na ne zelve Vlaamſche havenen ge-
‘ deſtineert waren, niet jegenſtaande zy nog
‘ verre daar van daan zynde wierden agter-
‘ haalt, ten ware zy proprio motu, eer zy
‘ in't geſight of gevolg van's Land's ſchepen
‘ raakten, *re adhuc integrâ pœniterende*, ve-
‘ randerden, 't geen, *pro re nata, ex con-*

' *jecturis & circumſtantiis*, zoude geoordeelt
' worden.'

And alſo Ships and Cargoes are to be condemned.

Art. II. ' If, from the Bills of Lading, Article II.
' or from other *Circumſtances*, it appears
' that the Ships were deſtined to the ſaid
' Ports in Flanders, notwithſtanding they
' were overtaken at a Diſtance far from
' them, or had of their own Motion changed
' their Courſe before they came in Sight,
' or were chaced, which ſhall be deter-
' mined, *pro re nata*, from probable Con-
' jectures and Circumſtances.'

Art. III. ' Welke uyt de voorſchr, ha- Article III.
' venen komen (ſonder nood daar in ge-
' raakt zynde) al wierden de zelve verre daan
' van daan genomen, zoo lang zy van die
' reyſe in geen vrye havenen van haar of een
' neutraal geweeſt zyn, maar geweeſt zynde,
' niet, ten ware zy in't uytkomen der
' voorſchr havenen van's Land's ſchepen ge-
' volgt, en in een andere haven, als haar
' eigen, of daar de reyſe gedeſtineert was,
' gejaagt, en wederom uytkomende op zee
' verovert wierden.'

Art. III. ' Or which Ships come from the Article III.
' aforeſaid Ports (unleſs driven into them by

' Neceſſity) altho' they were taken at a Di-
' ſtance far from them, ſo long as they have
' not on that Voyage been in any Free Port
' of their own, or any Neutral Port; but
' having been in, (*viz.* in ſuch Ports of the
' Enemy in Flanders) notwithſtanding, in
' caſe, if, on their coming out from the
' aforeſaid Ports, they are followed, and
' driven into another Port which is their
' own, or to which their Voyage was deſtined,
' and upon their coming out again from
' thence, if they are taken at Sea,

The Ships and Cargoes are in this Caſe to be confiſcated.

The Placart of July 27, 1584, conſiders the Blocking up of the Enemy in a moſt extenſive Manner, ſo as to comprehend the Enemy's Coaſt; which is grounded upon this Principle, as it is to be imagined, that a Fleet lying in the Entrance of a Harbour is not neceſſary to make the Meaning of the Word Blocked up; which may certainly be taken, as it is by the Dutch States in this Placart, in a wider Senſe; and that every Harbour is blocked up, *quoad hunc*, to every Ship deſtined for that Harbour that is taken; altho' many Ships may eſcape: It is blocked up to all Intents and Purpoſes as to that particular Ship; and, for this Reaſon (to

uſe

uſe the Words of a Dutch modern * Writer of great Authority) becauſe the Captured are gone ſo far as not to have it in their Power to return. And it may be obſerved, that it is indifferent, certainly upon the above-mentioned Principle, whether the Ships are taken by ſingle Cruizers, or by a Squadron.

The Words of the Placart, confiſcating both Ships and Cargoes, are:

'Die binnen de banken van Vlaanderen
'of op de kuſten van eenige verbodene
'havenen gevonden worden, zullen geeor-
'deelt worden tegen deſe Ordonnantie ge-
'daan te hebben, ten ware zulks gebeurde
'door treffelyke en wel bekende nood.'

'Ships, that are found within the Banks
'of Flanders, or *on* the Coaſt of any for-
'bidden Harbour, ſhall be adjudged to have
'offended againſt this Ordonnance, *even*
'where this happens from evident well-
'known Neceſſity.'

Ships and Goods taken *near* the Enemy, are preſumed to be going to the Enemy, and confiſcable. Vide Placarts publiſhed by the States-General, 1665, 1672.

* 'Quum eo jam ſunt progreſſi unde locus redeundi non
'eſt.' Bynkerſhoek. Quæſt. Juris Pub. L. 1. c. xi. p. 89.

The Ordonnance of the States-General, prohibiting all Commerce with England, December 5, 1652, is as follows *:

C'eſt pourquoy etant obligès a raiſon de ces hoſtilitès de reparer & faire reparer les dits dommages avec l'aſſiſtance de Dieu, d'en prevenir d'autres a l'avenir, & d'empêcher autant qu' en nous eſt a ceux dudit Gouvernement les commoditez, & les choſes neceſſaires par leſquelles ils pourroient continuer d'aporter du dommage a l'Etat de ces Pais, & aux bons habitans d'iceux; Nous avons trouvè bon & jugè neceſſaire d'ordonner a tous ceux qui ſont ſous notre Domination & de leur deffendre bien expreſſement

' Soo iſt, dat Wy
' door de voorsz vy-
' antlicke aggreſſien
' genootdruckt zijn-
' de, omme de voorsz,
' ſchaden, door God's
' hulpe, te repareren,
' doen repareren, ende
' alle vordere in toe-
' comende, voor te
' comen, oock daar
' benefens de ruine
' van de Commercie
' ende Navigatie de
' ſer Landen, ſoo veel
' doenlijck, te belet-
' ten, ende tot dien
' eynde die vande
' voorsz. Riegeringe,
' ſoo veel in Ons is,
' te benemen, ende te
' verhinderen de com-
' moditeyten ende be-
' hoeften,

* This Ordonnance is publiſhed in Low-Dutch and French, in the *Corps Diplomatique*, Tom. VI. Part 3. Printed at the Hague, 1728.

ſement, comme auſſi d'avertir toutes autres Nations qui ſont en Alliance, Amitié & Neutralité avec cet Etat ; comme nous Ordonnons, &c.

‘ hoeften, daer mede
‘ de Selve den ſtaet
‘ deſer Landen, ende
‘ de goede Ingeſetenen
‘ van dien, verder af-
‘ breuck ſouden hon-
‘ nen doen, derhalven
‘ goet gevonden ende
‘ noodich geacht heb-
‘ ben, allen dan ge-
‘ enen die onder on-
‘ ſe gehoor ſaemheyt
‘ zijn ſtaende, te or-
‘ donneren, ende wel
‘ Scherpelick te ver-
‘ bieden oock in ’t
‘ vruntlijck te adver-
‘ teren en te waerſch-
‘ ouwen alle andere
‘ Natien met deſen
‘ ſtaet in Verbondt
‘ Vruntſchap, of te
‘ Neutraliteyt ſtaen-
‘ de,’ &c.

Being obliged, therefore, by reaſon of theſe Hoſtilities, with God's Help, to repair, and cauſe the ſaid Damages to be repaired, to prevent others for the future, and as far as poſſible to hinder the Ruin of the Commerce and Navigation of this Country ;

try; and for this end to deprive thoſe of the ſaid Government, as far as it is in our Power, of the *Conveniencies* and Neceſſaries, by which they might continue to *damage* the State of this Country, and the good Inhabitants thereof; we have thought it fit and neceſſary to order all thoſe who are under our Obedience, and moſt expreſsly forbid them, as alſo to give *Notice to all other Nations* which are in Alliance, Amity, and Neutrality with this State; as we do, *&c.*

Que d'icy en avant perſonne des Habitans de ces Pais n'ait à s'ingerer de mener ou tranſporter hors de ces Pais, ou hors d'autres Pais, Royaumes, Places ou Villes directement ou indirectement, aucune Merchandiſe ou Denrée de quelque ſorte, qualité, ou nature qui ce puiſſe être, nulle exceptées, dans quelques Ports, Iles, Villes, & Places d'Angleterre, Ecoſſe, ou Irlande, ou autres de la Domination

‘ Art. I. ‘ Eerſtelijck, ‘ dat van nu voortoen ‘ niemant van d'Inge- ‘ ſetenen deſer Lan- ‘ den, hem ſal heb- ‘ ben te bevorderen uyt ‘ deſe Landen, ofte ‘ oock uyt eenige an- ‘ dere Landen, Ko- ‘ ninckrijcken, Plaet- ‘ ſen, ofte Steden, te ‘ vervoeren ofte tranſ- ‘ porteren, directeli- ‘ jck, ofte indirecte- ‘ lijck, naar eenige ‘ Havenen, Eylanden, ‘ Steden, ofte Plaet- ‘ ſen van Engelandt, ‘ Schot-

tion du preſent Gouvernement d'Angleterre, ni d'avoir aucune Correſpondence avec les Habitans des dits Royaumes, ou Dependances, par Lettres ou autrement, tendantes au deſavantage de cet Etat.

Q'auſſi Perſonne du Monde, quoi qu'Etranger, & non habitant de ces Pais, n'ait à entreprendre de faire rien de ce qui eſt dit ci-deſſus, ſur peine d'etre punis ſans aucune connivence, comme Ennemis de cet Etat, & en outre ſur peine de confiſcation des Vaiſſeaux & Merchandiſes qui ſe trouveront avoir eu deſſein d'aller en Angleterre, ou autres Places comme deſſus, ou la valeur d'iceux & à icelles, au cas qu'ils ſoient deja retirès & qu'on ne les aît pû ſaiſir.

‘ Schotlandt,ofte Yer-
‘ landt, ofte anderen
‘ onder de gehoor-
‘ ſaemheyt vande je-
‘ genwoordige Regi-
‘ eringe van Enge-
‘ landt ſtaende, eenige
‘ waren, Gooderen of-
‘ te Coopmanſchap-
‘ pen, van vat ſoorte,
‘ qualiteyt, ofte na-
‘ ture de Selve oocke
‘ ſouden mogen we-
‘ ſen, geen uytgeſon-
‘ dert, ofte oock eeni-
‘ ge correſpondentie
‘ ende gemeenſchap-
‘ met d'Indwoonde-
‘ ren van Engelandt
‘ voornoemt, ofte ha-
‘ ere onnderhoorigen,
‘ door Brieven ofte
‘ anderſints, ſtrick-
‘ ende tot naedeel van
‘ deſen Staeten, te
‘ houden, in eeniger
‘ manieren, dat oock
‘ niemandt ter We-
‘ relt, al-hoe-wel en
‘ Vreemdelingh, ende
‘ geenIngeſtenendeſer
‘ Landenzijnde,hem't

‘ geen

‘ geen voorſz. Is uyt
‘ deſe Landen ſal heb-
‘ ben t'onderwinden,
‘ op pene van daer
‘ over, als Vyanden
‘ vanden Staet, ſonder
‘ eenige conniventie,
‘ geſtraft te worden,
‘ ende voorts op ver-
‘ beurte van alle de
‘ Schepen ende Good-
‘ eren die men be-
‘ vinden ſal, dat ge-
‘ pooght worden naer
‘ Engelandt voorno-
‘ emt, ofte andere
‘ Plaetſen als vooren,
‘ vervoert te worden,
‘ ofte de waerde van
‘ dien, by ſoo verre
‘ de ſelve albereyts
‘ uytgevoert, ofte an-
‘ derſints niet te be-
‘ komen ſullen wer-
‘ den.’

Article I. ‘ That from henceforward
‘ none of the Inhabitants of theſe Coun-
‘ tries offer to carry, or tranſport out of
‘ theſe Countries, or *out of any other Coun-*
‘ *tries*, Kingdoms, Places, or Towns, di-
‘ rectly, or indirectly, any Merchandiſe, or
‘ Commodity of *any Sort*, *Quality*, *or Na-*
‘ *ture ſoever*, (none excepted) into any
‘ Harbours, Iſlands, Towns, and Places of
‘ England, Scotland, or Ireland, or others
‘ in the Dominion of the preſent Govern-
‘ ment of England, nor to have *any Corre-*
‘ *ſpondence* with the Inhabitants of the ſaid
‘ Kingdoms, or Dependencies, by *Letters*,
‘ or *otherwiſe*, tending to the Diſadvantage
‘ of this State. Neither ſhall any Perſon
‘ whatever, *though* a Foreigner, and *not an*

‘ *Inhabitant of theſe Countries, undertake
‘ to do any thing of what is ſaid as above,
‘ on pain † of being puniſhed, without any
‘ Connivance, as Enemies of this State.

‘ And moreover, on pain of forfeiting
‘ ſuch Ships and Merchandize, as ſhall
‘ appear to have been deſtined for England,
‘ or other Places as above, or the Value
‘ thereof, in caſe that they are already
‘ withdrawn, and cannot be laid hold of.’

The Contents of other Articles are as follows:

Article IV. ‘ All Neutral-ſhips are to
‘ keep the high Seas, and not to be found
‘ upon the Coaſts, and particularly in the
‘ Bays and Creeks of the Enemy.’

Article V. ‘ To be viſited, and their Do-
‘ cuments ſearched, that the Dutch Com-
‘ manders may be aſſured that they are not
‘ going to England; if it appears from the
‘ Documents, or from other Circumſtances,
‘ that they are deſtined thither; then they

‘ may

* Bynkerſhoek. Quæſt. Juris Pub. L. 1. c. x. p. 33. ſays as follows.

† ‘ Negant Fœderati et ſocii noſtri ſubditum ad communem
‘ hoſtem commeantem a nobis puniri, vel res ejus publicari
‘ poſſe, quemque enim principem ſua ipſius edicta exſequi,
‘ adeoque nullas hic eſſe Fœderatorum partes. Sed *ratio*,
‘ *uſus* atque *ipſa Utilitas* eam ſententiam evertunt. Excute quæ
‘ de ea re, habet Aitzema. Hiſt. Belg. L. 46. p. 629, 630.

'may *safely* be brought in for Adjudica-
'tion.'

Memoire Instructif, *or the Ordonnance and Regulations delivered by the Court of France to the States-General of the United-Provinces, published by Authority in the Utrecht Gazette, July* 8, 1756.

PREAMBLE,

'Every Power at War is naturally atten-
'tive to prevent its Enemies from carrying
'on a free Trade, under the Protection of
'Neutral Colours. It may happen, for
'example, that notwithstanding a Ship
'carries Neutral Colours, that the Ship it-
'self, and the Goods on-board her, may
'really and truly be the Property of the
'Enemy, which is, what is termed, a
'*Navire Masqué* (or a Ship disguised). In
'such a case, if the Enemy's Property is
'discovered, the Ship would be deemed a
'good Prize.

'As during a War every Power is *justified*
'in suspecting that Disguse and Artifices
'will be made use of, the Privateers are
'diligent in stopping Neutral-ships, to *ex-*
'*amine* by the Papers and Documents,
'which they are obliged to have on-board,
'if

‘ if they are really Neutrals, or if the Ships
‘ or Cargoes belong to the Enemy.’

The Ordonnance of the Marine and Regulations of France have exacted certain Conditions and certain Forms, which, when obſerved * *by a Neutral-ſhip*, that Ship is conſidered as truly neutral; but if, on the contrary, it is found that there is a Failure in any of thoſe Forms and Conditions, the Ships are to be preſumed to be diſguiſed, that is, to belong to the Enemy, and are to be deemed lawful Prizes.

It muſt alſo be here obſerved, that the Regulations eſtabliſhed by France during the War, are not particular to her only, but that other Nations have eſtabliſhed nearly the ſame.

As the Hollanders are neutral in the preſent War, it is their *Intereſt* to conform to the Regulations of France, to prevent their Ships being declared good Prizes.

1. Among the Number and Quality of the Papers which they are to have on-board their Ships, muſt be the Charter-party, Bills of Loading and Invoices: where theſe

* It appears by this, that the French Admiralty condemns or acquits all other Neutral-ſhips upon theſe Principles, as well as Dutch Ships, and that it conſiders theſe Principles as the Law of Nations.

Documents are not found, the Ships will be deemed good Prizes.

2. It will not be ſufficient that the Ships have the Bills of Loading on-board, but they muſt alſo be found ſigned by the Captain; if they are not ſo ſigned, they will be conſidered as null, and the Ships and Merchandizes will be adjudged as good Prizes; becauſe from ſuch Defect they will be preſumed to belong to the Enemy.

N. B. It was always cuſtomary to make double and triplicate Bills of Loading, and till now they thought that in Holland it was not neceſſary, that thoſe which the Captain carries ſhould be ſigned by him, and that he had them to ſerve only as Memorandums, to aſcertain the Merchants to whom he was to deliver the Goods, and to enable him to demand his Freight; nor in the laſt War were ſuch Things commonly practiſed; which however has been the Occaſion of the Confiſcation of many Ships.

3. If a Dutch Ship ſhall be met with by a French Privateer, the Captain is to take care not to throw, nor cauſe to be thrown, *any of his Papers* into the Sea; if it ſhould be proved that *any kind* of Papers were thrown overboard, the Ship and Cargo ſhall be declared a good Prize.

4. The Dutch are further to obſerve, that the Super-cargo, Clerk, or Marine-officer, is not to be a Native of any Country at Enmity with France; and that not more than a Third of the Ship's Crew be the Subjects of the Enemy. If theſe Particulars ſhould not be obſerved, the Ship ſhall be declared a good Prize, and preſumed to belong to the Enemy.

5. Among the Papers on-board Dutch Ships, muſt be the Equipage or Muſter-roll, authenticated by the public Officers of the Place from whence they came: when this Authenticity is wanting, the Ships will be declared good Prizes.

6. The Dutch Merchants are likewiſe to obſerve, not to export by their Ships, any Contraband-goods, ſuch as Fire-arms, Swords, Cutlaſſes, and other Things uſeful and neceſſary for the Purpoſe of War, under pain of Confiſcation.

7. If the Dutch Ships carry any Goods or Merchandize of the Growth or Manufacture of the Enemies of France, they ſhall be eſteemed good Prizes; but the Ships ſhall be diſcharged.

N. B. The Regulation made in the laſt War, permitted the Dutch to trade with the

the Enemy, in conformity to the Treaty of Commerce made with the States in 1739. But as the King revoked that Treaty at the Concluſion of the War, the Goods of the Growth or Manufacture of England, or belonging to the Engliſh, which ſhall hereafter be found on-board a Dutch Ship, ſhall be declared good Prize, unleſs the 14th Article of that Treaty ſhould hereafter be renewed.

8. The Licence or Paſſport, which may be granted in Holland to a Dutch Ship, ſhall be of uſe only for that Voyage for which it was given; that is, to go from the Place of its Loading, to that of its Deſtination, and from thence to return to Holland. If it ſhould make any other *intermediate* Voyages with that Paſſport, it ſhall be declared a good Prize.

9. When the Licence or Paſſport ſhall be given in Holland to a Dutch Ship, it muſt be declared in that or ſome other Paper on-board, that the Ship was, at the time of granting it, in one of the Ports of Holland: in failure of which ſhe ſhall be deemed a good Prize.

10. If the States of Holland ſhould grant Paſſports or Licences to the Owners or Maſters of Ships, Subjects of an Enemy of

of France (unleſs ſuch Owners or Maſters ſhall have reſided, and been *naturalized* in Holland, * *before* the Declaration of the preſent War) the Ships and Merchandize ſhall be confiſcated, as reputed to have belonged to the Enemy, even though the Ship ſhould have been built in Holland.

11. If a Ship is Engliſh-built, or formerly belonged to the Enemy, the Dutch Captain muſt have on-board authentic Papers, and a Bill of Sale certified by the public Officers in Holland, to prove that ſuch Ship is Dutch Property, and was ſuch † *before* the Declaration of the preſent War.

N. B. It is further required, that it be proved by the Papers on-board, that the Deed of Transfer of the Property of the Ship has been regiſtered by the principal Officer of the Port in Holland, from which the Ship has departed; and without theſe *two* Proofs, the Ship may be declared a good Prize; of which there were ſeveral Inſtances in the laſt War.

12.

* This ſhows how much the French were aware of the Readineſs of the Dutch to grant Burghers Briefs to any that apply for them.

† From this Article it ſeems, that the French do not allow the Dutch to purchaſe, in time of War, any Ships of the Enemy.

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12. If during the preſent War, any Privateer, or Ship of War, ſhould take any Ships Engliſh-built, and that thoſe Ships ſhould afterwards be ſold to the Dutch, or other neutral Subjects, there muſt always be found on-board of them Documents to prove the *Captures* as well as the Sale; without which, ſuch Ships will be liable to Condemnation.

This Account contains therefore the principal Rules that Dutch Ships are to obſerve (not but that other neutral Powers are under the ſame Reſtrictions regarding their Ships) and the principal Precautions which they are to avoid, being declared good Prizes in caſe they ſhould be taken during the Courſe of the preſent War, by the French Men of War or Privateers.

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